

Probation Reform in California: Senate Bill 678



**ROGER K.
WARREN**

Scholar in
Residence,
Judicial Council
of California

On October 11, 2009, California Governor Arnold Schwarzenegger approved historic legislation to strengthen felony probation services in the state. Senate Bill 678 addresses acute and long-standing deficiencies in California's system of adult probation services in a manner of national significance. I first summarize the current state of adult probation services in California, discuss some of the significant national and California developments in state probation reform that underlie the new California legislation, and then turn to a full discussion of SB 678 and its companion legislation.

I. Adult Probation Services in California

More than three quarters of convicted California felony offenders are placed on probation, not sentenced to state prison.¹ Despite its importance, probation has largely been neglected by the State of California, which has left localities with the principal responsibility for providing services. California is one of only two states in the nation that does not provide an ongoing stream of funding to support adult probation services. California is also among a dwindling number of states that have no state system of community corrections.²

A. Probation's Funding Conundrum

Ironically, California was one of the first states in the nation to promote the development and use of community corrections services when it adopted the Probation Subsidy Act of 1965. The goal of the Act was to reduce commitments to state institutions by 25 percent. To retain offenders in the community, the Act provided county probation departments with funding in the amount of \$4,000—the approximate cost that the state would have incurred if the adult and juvenile offenders had been committed to state institutions.³ The Act operated successfully for more than ten years; it ultimately diverted more than 45,000 juvenile and adult offenders.⁴ By 1972, California had reduced its prison population by 30 percent and closed eight prison facilities.⁵ Under the program, virtually all nonviolent property offenders were reportedly handled locally.⁶

Inspired by California's experience under the Probation Subsidy Act, about half of the states decided after 1972 to shift resources and responsibilities for major

portions of state correctional services from state to local governments. Formal state-sponsored community corrections acts now exist in at least twenty-four states.⁷

California's approach to probation began to change in the late 1960s and 1970s, as crime rates rose both state- and nationwide. Despite research evidence to the contrary, some critics blamed the increase in California crime on the probation subsidies (so-called blood money) paid to keep offenders out of state institutions.⁸ At the same time, the counties complained about the failure of the state to adjust the \$4,000 payment for inflation.⁹ Starting in 1978, the probation subsidy program was replaced by a series of county criminal justice subsidy and block grant programs that continued to provide funding to county juvenile probation programs but gradually eliminated funding for adult probation services.¹⁰

As a result, since 1978, delivery of adult probation services in California has relied almost entirely on county funding sources, which have proved to be quite unreliable. In 1978, California voters passed Proposition 13, a state constitutional amendment capping local property tax rates and requiring a two thirds majority in both legislative houses for future increases in state tax rates and a two thirds majority in local elections to raise local taxes.¹¹ In 1979, voters passed Proposition 4, amending the state constitution to impose spending limits on most state and local government appropriations from tax sources.¹² One of the effects of these two initiatives was to significantly reduce the taxing and spending authority of local government. No function of local government was hit harder than probation.

Due to the absence of state funding, as well as the devastating impact of Propositions 4 and 13, adult probation services in California have been woefully underfunded for at least thirty years. By 2001, county general funds constituted less than half of the budgets of many probation departments; the departments came to rely more and more on probationer fees and onetime state and federal grants, which primarily targeted juvenile offenders. Increasingly scarce county funds also targeted juvenile offenders. Probation departments today spend an average of \$1,250 per year in supervising adult offenders, compared with \$6,300 per year on juvenile offenders.¹³

Federal Sentencing Reporter, Vol. 22, No. 3, pp. 186–193, ISSN 1053-9867 electronic ISSN 1533-8363.
©2010 Vera Institute of Justice. All rights reserved. Please direct requests for permission to photocopy
or reproduce article content through the University of California Press's Rights and Permissions website,
<http://www.ucpressjournals.com/reprintInfo.asp>. DOI: 10.1525/fsr.2010.22.3.186.

As a result of the historic underfunding of adult probation services, California probationers fail to successfully complete probation at a rate 10 percent higher than probationers nationally.¹⁴ State and national surveys conducted in the mid-1990s found that approximately one in every seven adult probationers in California had his or her probation revoked, compared with a national average of one in ten.¹⁵ According to the California Department of Corrections and Rehabilitation (CDCR), an average of about 19,000 felony probationers are revoked to state prison annually, constituting about 40 percent of all new prison admissions from the courts.¹⁶ A study by the California Legislative Analyst's Office concluded that the high number of probation revocations has helped drive up California's prison population, and estimated that the state spends about \$1 billion annually to incarcerate, supervise, and treat these offenders who first enter the prison system on account of a probation revocation.¹⁷

B. Probation and the Demise of Rehabilitation

Apart from its local funding problems, California's probation system has also been influenced by nationwide trends regarding the purpose and function of probation. Historically, probation departments have aspired to serve rehabilitative goals—at least in part—with the objective of helping offenders successfully integrate back into society. However, the prevailing wisdom of the 1970s proclaimed that “nothing works” to rehabilitate criminal offenders. The criminal justice system started to favor punishment and incarceration over rehabilitation and offender services.

Probation departments changed accordingly. During the 1980s and 1990s, the mission of probation in California, as well as nationally, shifted toward an emphasis on punishment, surveillance, and detection of probation violations.¹⁸ A 1995 survey of California probation departments, for example, found that three quarters of the departments viewed enforcement of the terms of probation as the top priority, whereas only 8 percent regarded rehabilitation and social reintegration as the top priority.¹⁹

To promote these enforcement goals, probation offices used risk-assessment tools to support offender classification systems and risk-control strategies, but not to promote rehabilitation efforts or to change offender behavior. The concepts of recidivism reduction and evidence-based practice are never mentioned in a 1996 discussion of the changing role of probation in California's criminal justice system.²⁰

The focus on control and surveillance resulted in probation officers spending more time on paperwork, less time on supervising offenders. Funding shortages probably exacerbated this trend, as probation agencies focused not on the effectiveness of probation services, but on administrative efficiencies that helped them survive fiscal crises.²¹ Pre-sentence reports were shortened or eliminated, risk-based offender classification systems were introduced, and agencies increasingly relied on banked or administrative caseloads, which involved little or no active

case supervision.²² In California today, about 350,000 offenders are on adult probation, more than three quarters of whom (nearly 270,000) have been placed on probation for felony offenses.²³ More than half of those offenders are on banked caseloads.²⁴

Throughout the United States, probation became an even more rapidly revolving door back into the sentencing and corrections system.²⁵ A nationwide investigation published by the Bureau of Justice Statistics in 1994 found that 49 percent of probationers in the study were discharged from probation before having fully complied with all required terms. Of the offenders who violated the terms of their probation, 52 percent did not receive disciplinary hearings or additional punishment.²⁶ By the end of the 1990s, probation leaders throughout the nation acknowledged that “public regard for probation is dangerously low, and for the most part in most places what passes for probation supervision is a joke.”²⁷

II. The Rise of Probation Reform

With probation departments suffering a crisis in confidence, efforts to reform the probation system began to emerge in California, and nationwide, in the late 1990s. These efforts drew on a body of social science research in the United States, Canada, and England challenging the earlier view that nothing works and beginning to identify what does work to reduce recidivism among criminal offenders.²⁸

With a renewed interest in treatment and other correctional interventions, community corrections throughout the United States began to shift focus away from risk-control models toward risk-management models. These models incorporated risk-reduction goals and recognized that risk reduction could be promoted “by reliable, effective and proper correctional interventions that influence offenders to choose law abiding behavior in the future and that are capable of being tested by empirical means.”²⁹ The objective, in short, was to incorporate evidence-based interventions into the probation department's mission.

A. A National Movement

The Maryland Department of Probation and Parole was one of the first state probation agencies in the country to make the change. In 2000, the department sought to integrate evidence-based practice literature on what works into the field of probation supervision. Rather than relying solely on treatment agencies to facilitate offender change, the probation office adopted that objective as part of its own mission.³⁰

By 2002, principles of evidence-based practice (effective intervention) to reduce offender recidivism had gained national recognition.³¹ In that year, the National Institute of Corrections entered into a cooperative agreement with the Crime and Justice Institute to develop a model for implementing evidence-based practices in criminal justice systems.³² Then, four years later, the Pew Center on the States launched its Public Safety Performance

Project to help states “advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.”³³

In 2008, the Pew project brought together leading practitioners and researchers to identify strategies for improving state probation and parole systems. The Pew Center’s report, *Policy Framework to Strengthen Community Corrections*, directed national attention to the high adult probation failure rates resulting from the under-resourcing of community supervision agencies. The report also provided a set of options, including implementation of evidence-based practices and performance incentive funding, that state legislators and policymakers could implement to reduce probationer recidivism.³⁴

The performance incentive funding option allows state probation departments to keep a portion of the funds saved due to performance improvements—specifically, funds saved from intervention efforts that reduce the rate of probation revocation and recidivism. In June 2008, Arizona adopted a similar kind of performance incentive funding mechanism when it passed Senate Bill 1476. The bill implemented performance funding for probation, beginning in FY 2010–2011.³⁵

B. Probation Reform Comes to California

Along with criminal justice experts throughout the nation, commentators in California have long recognized the need for community corrections and probation reform. Calls for reform can be traced back at least to 1990, when the Blue Ribbon Commission on Inmate Population Management recommended that California develop and expand a program of community-based sanctions for targeted offenders.³⁶ Specifically, the Commission recommended that the state reimburse counties 85 percent of the present cost to maintain a state offender in prison for each diverted offender.

The California Legislature appeared to adopt the Blue Ribbon Commission’s recommendations in 1994 when it enacted the Community-Based Punishment Act.³⁷ The Act called for the creation of state-local partnerships to effectively manage appropriate offenders in community-based programs of sanctions and services. Unfortunately, implementation of the Act was contingent on funding, and funding was never appropriated.

In June 2000, the Judicial Council of California and the California State Association of Counties established the Probation Services Task Force to conduct “the most thorough examination of the state’s probation system by a multidisciplinary body since the Legislature authorized the establishment of adult and juvenile probation in 1903.”³⁸ After three years of study, the Task Force concluded that there was a clear need to move away from the current patchwork funding model for adult probation services. The Task Force called for a realignment of probation services with the state³⁹ and establishment of an adequate and stable funding base for probation in order “to protect

the public and ensure offender accountability and rehabilitation.”⁴⁰

As California’s prison overcrowding problem reached crisis proportions in 2007, the California Little Hoover Commission also called upon the state to reallocate its resources in order to establish a continuum of community-based sanctions.⁴¹ Under this proposal, judges would have the authority, guided by validated offender risk and needs assessment tools, to sentence appropriate offenders to community-based programs who would otherwise be sentenced to prison. Judges would also have the responsibility to monitor offenders’ progress in the assigned programs.⁴²

In June 2007, the California Administrative Office of the Courts (AOC) sponsored the Judicial Symposium on Public Safety, Sentencing, and Corrections, which brought together a cross-section of California judicial and criminal justice system representatives with sentencing and corrections experts from around the country. The goal: to discuss how evidence-based practice can reduce offender recidivism, as well as other topics relevant to the current state of California’s sentencing and corrections systems. Many of the judicial branch participants in the symposium recommended that a follow-on program, focusing on the specific role of the courts in efforts to improve California’s probation and sentencing systems, be convened for a much larger audience of judicial branch leaders.

To that end, the Judicial Council of California convened the Summit of Judicial Leaders on Sentencing, Community Corrections, and Evidence-Based Practice in October 2008. The Summit focused on ways in which the California judicial branch, working cooperatively with other branches of government and its criminal justice partners, could improve public safety through implementation of sentencing and adult probation practices that more effectively reduce recidivism and hold offenders accountable. In April 2009, the Summit Advisory Committee and Judicial Council’s Criminal Law Advisory Committee approved a set of recommendations to the Judicial Council that arose from the Summit proceedings, including that legislation be enacted to emphasize the reduction of recidivism as a primary purpose of probation and sentencing, and that strategies be developed to strengthen adult probation services.⁴³

III. Senate Bill 678 and Its Companion Legislation

The state and national developments discussed previously generated interest in reforming California’s probation system, but it was not until 2009 that a major legislative change occurred.⁴⁴ In that year, Democratic State Senator Mark Leno and Republican State Senator John Benoit coauthored landmark legislation, SB 678, that created the California Community Corrections Performance Incentive Program.⁴⁵

A. Details of the Legislation

The California Community Corrections Performance Incentive Act expressly declares that probation is a “linchpin

of the criminal justice system, closely aligned with the courts, and plays a central role in promoting public safety in California's communities."⁴⁶ But the sponsors of the Act acknowledge that, due to underfunding, probation has failed its mission. The Act specifically finds that in 2007 "nearly 20,000 . . . felony offenders . . . were committed to state prison after failing probation supervision."⁴⁷

The Act attempts to achieve two major changes in the probation system. First, it encourages the development of evidence-based intervention programs through the establishment in each county of a "community corrections program," which is defined as a "system of felony probation supervision services" implemented by probation with the advice of a county interagency Community Corrections Partnership.⁴⁸ The program must consist specifically of "evidence-based community corrections practices and programs," such as the use of evidence-based risk and needs assessment tools, evidence-based rehabilitation programs, intensive probation supervision, intermediate sanctions, program evaluation, and program fidelity.⁴⁹

Second, the Act seeks to "reduce the felony probation failure rate by investing in probation" through creation of sustainable state funding to support implementation of the above evidence-based practices. The sponsors of the Act believe that the principal reason for high levels of probation failure is that probation is "sorely under-resourced" and that because of the funding constraints "it is highly unlikely that counties will be able to increase needed probation department resources in the foreseeable future."⁵⁰

The California Legislative Analyst's Office has calculated that the state spends roughly \$50,000 in marginal additional prison and parole costs for each probationer sentenced to prison.⁵¹ The Act therefore embodies the strategy of reducing crime in California communities through investments in probation of a portion of the annual savings in the state's corrections budget resulting from implementation of evidence-based probation supervision practices. Companion legislation enacted as part of the California Budget Act of 2009 provides seed money to county probation departments to initiate development of the evidence-based supervision practices that are necessary to create the initial state taxpayer savings.⁵²

The Act creates a state fund, to be administered by the California AOC and used for probation reform, that consists of the state taxpayer savings resulting from probation failure reduction—defined as reduction in the number of felony probationers sent to prison on account of either a new felony conviction or probation revocation. Specifically, up to 45 percent of the state savings resulting from a probation department's success in reducing recidivism and revocations among felony probationers is to be returned to the county's chief probation officer in the form of a "probation failure reduction incentive payment" to fund implementation of the county's "community corrections program."⁵³ In developing these performance-based incentives, the authors of the Act expressly acknowledge their reliance on Arizona SB 1476 and the Pew Policy

Framework described previously.⁵⁴ They also specifically acknowledge and cite the recommendations arising from the Judicial Council's Summit of Judicial Leaders and from the earlier Probation Services Task Force Report.

Community corrections programs funded pursuant to the Act must track specific outcome-based measures to be defined by the California AOC in consultation with the Chief Probation Officers of California. Chief probation officers must also provide annual written reports to the AOC evaluating the effectiveness of their community corrections programs. In consultation with chief probation officers and the CDCR, the AOC must provide quarterly statistical reports to the Department of Finance and comprehensive annual reports on the implementation of the Act to the governor and the legislature. The legislation specifies that at least 5 percent of a probation department's funding shall be used to evaluate the effectiveness of the programs implemented with performance incentive funding (unless the California AOC waives this restriction upon a finding that the department is already devoting sufficient funds to evaluation).

Finally, the Judicial Council of California is required to consider adoption of appropriate modifications to the California Criminal Rules of Court "and of other judicial branch policies, procedures, and programs affecting felony probation services"⁵⁵ that would support implementation of the evidence-based probation supervision practices described in the Act.

B. Broad Political Support for the Legislation

As noted, the primary goal of SB 678 is to improve the performance of adult probation services and create a stable source of funding for these reforms. In the sponsors' view, a secondary benefit of the legislation is the reduction of prison overcrowding in California, not by early release of inmates but by decreasing criminal activity among those on probation. A third benefit is that offenders will be held "MORE accountable for their actions by providing better supervision, monitoring, and intermediate sanctions that will change their behavior."⁵⁶

The potential benefits of the legislation attracted a wide range of supporters. SB 678 was sponsored by the Chief Probation Officers of California, a respected California law enforcement association, and supported by other law enforcement organizations, the Little Hoover Commission, and the Judicial Council of California. The legislation had no organized opposition.⁵⁷

SB 678 passed both houses of the California legislature without a single No vote—quite a remarkable achievement in a state so often burdened by partisan and policy differences in matters related to crime, sentencing, and corrections. In addition to the sound logic of the bill, and strong state and national support for its provisions promoting the use of evidence-based practices and performance incentive funding, several other factors seem to have been significant in achieving widespread support for the bill and avoiding any significant opposition.

At the time the bill was being considered, California was faced with a dramatic state budget crisis. In January 2009, California faced a \$41.6 billion two-year deficit that Governor Schwarzenegger described as “the brink of financial catastrophe.”⁵⁸ By July 2009, the size of the deficit had grown to almost \$60 billion. Absolutely no uncommitted state funds were available to invest in probation. In 2009 (and perhaps in the immediate future, as well), the only conceivable way to provide state funding for implementation of evidence-based practices in probation was to move money from the back end of the criminal justice system to the front end—that is, to use savings from the CDCR budget that would be realized by reducing probation failure rates.

After its introduction, the provisions of SB 678 also were included as an element of the corrections reform package that the legislature and administration began to develop in February 2009 to achieve necessary, but unallocated, cuts to the CDCR budget. In scoring the savings that various legislative proposals would produce toward meeting the unallocated cuts in the CDCR budget, legislative budget committees and the administration estimated that the SB 678 provisions could result in \$30 million in savings in the CDCR budget in FY 2009–2010.

The provisions of SB 678 were thus enacted without any appropriation of state general funds, albeit in slightly different versions, as part of the corrections reform package and as SB 678.⁵⁹

Another significant factor was the legislation’s strong reliance on outcome-based performance measures. Under SB 678, county probation departments do not receive one dime of state general fund dollars unless and until, and to the extent that, the departments successfully reduce recidivism and revocation rates among felony probationers. As noted previously, the bill imposes strict outcome-based performance measures on probation and mandates quarterly and annual outcome-based reporting by probation and the AOC. The legislation is thus strictly performance based and differs substantially, for example, from probation subsidy strategies that provide funding to local jurisdictions to keep offenders in the community who would otherwise be committed to state institutions without regard to whether the local community corrections programs are effective in preventing crime and reducing recidivism. Sponsors and supporters of SB 678 felt it was important that the legislation avoid the earlier criticism of the Probation Subsidy Act of 1965, which claimed that local jurisdictions were being incentivized to keep offenders in the community who continued to endanger the community and who should have been imprisoned.

Finally, a third important feature of SB 678 is that the state’s own fiscal incentives are consistent with probation department incentives. Probation departments will continue to receive a share of state savings as long as and to the extent that their revocation and recidivism rates remain below baseline rates. But, importantly, the state also will continue to share in the state savings as long as

and to the extent that probation departments do. Thus, although the provisions of SB 678 sunset in 2014 unless extended, the probation funding strategy offers the prospect of stability and permanence as long as probation continues to perform effectively.

IV. Looking Forward

The effectiveness of SB 678 will not be known for several years. The first step will be distribution by the California Emergency Management Agency in early 2010 of the Evidence-Based Probation Supervision Grant funds, which are intended to jump-start development of evidence-based felony supervision services.⁶⁰ Reductions in recidivism and revocation rates, therefore, are likely to first occur in calendar year 2010. Thus, SB 678 incentive funds—based on each county’s success in reducing prison commitment rates among felony probationers—will likely not be appropriated until the state’s FY 2011–2012 budget, which will not be approved until at least June 2011. In the short term, therefore, California probation departments remain focused on how best to use the available grant funds to transition to evidence-based felony supervision services, and the AOC remains focused on working collaboratively with the Chief Probation Officers of California to provide technical assistance to the departments in implementing the grants as mandated by the Budget Act of 2009.⁶¹

It is far too early to reliably predict the long-term impact of SB 678. In its initial proposed Population Reduction Plan submitted to the federal Three Judge Court dealing with California’s prison overcrowding crisis on September 18, 2009, for example, the state defendants estimated that once fully implemented, SB 678 would produce an approximate reduction of 1,915 in CDCR’s average daily population, a probation failure reduction of less than 10 percent.⁶² On the other hand, the fiscal impact analysis of SB 678 on August 27, 2009, in the Assembly Committee on Appropriations noted that the Department of Finance estimated future savings on the assumption of a 50 percent reduction in the probation failure rate.

Despite these very different long-term predictions, it is not too early to conclude, however, that SB 678 and its companion legislation present the most promising opportunity for probation and sentencing reform in California in more than thirty years. How fully leaders of California probation departments and of California’s courts seize this opportunity remains to be seen.

Notes

- ¹ CRIMINAL JUSTICE STATISTICS CENTER, CALIFORNIA DEPARTMENT OF JUSTICE, *CRIME IN CALIFORNIA 2007*, at 70 (2007).
- ² Indeed, California is the *only* state in the union that has provided ongoing state financial support neither for adult probation services nor for community corrections programs.
- ³ Richard McGee, *Objectivity in Predicting Criminal Behavior*, 42 F.R.D. 192 (1966).
- ⁴ MARCUS NIETO, *THE CHANGING ROLE OF PROBATION IN CALIFORNIA’S CRIMINAL JUSTICE SYSTEM 8* (1996), available at <http://www.library.ca.gov/crb/96/06/96006.pdf>.

- ⁵ Tim Findley, *Story Behind the Decision—Dramatic Prison Reform*, S.F. CHRON., January 7, 1972, at 1, 26.
- ⁶ *Id.*
- ⁷ States with community corrections acts include Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, and Virginia.
- ⁸ CALIFORNIA LEGISLATIVE ANALYST’S OFFICE (hereinafter LAO), *ACHIEVING BETTER OUTCOMES FOR ADULT PROBATION 25* (2009).
- ⁹ *Id.* at 24.
- ¹⁰ *Id.* at 14.
- ¹¹ California Constitution, Article XIII-A.
- ¹² California Constitution, Article XIII-B.
- ¹³ LAO, *supra* note 8, at 23. By comparison, the average annual marginal cost per inmate in the state prison system is \$48,500.
- ¹⁴ LAO, *supra* note 8, at 20.
- ¹⁵ Nieto, *supra* note 4, at 35.
- ¹⁶ LAO, *supra* note 8, at 20.
- ¹⁷ *Id.*, at 20–22.
- ¹⁸ NORA HARLOW & E. KIM NELSON, *MANAGEMENT STRATEGIES FOR PROBATION IN AN ERA OF LIMITS i–iii* (National Institute of Corrections, rev. April 1986); Nieto, *supra* note 4, at 7.
- ¹⁹ *Id.* at 18–19.
- ²⁰ Nieto, *supra* note 4.
- ²¹ *Id.*
- ²² *Id.* at ii–iv. See also VINCENT O’LEARY & TODD R. CLEAR, *DIRECTIONS FOR COMMUNITY CORRECTIONS IN THE 1990s* (National Institute of Corrections, June 1984).
- ²³ Criminal Justice Statistics Center, *supra* note 1, at 82
- ²⁴ CHIEF PROBATION OFFICERS OF CALIFORNIA, *ADULT PROBATION SERVICES AND THE NEED TO INCREASE PUBLIC SAFETY, ACCOUNTABILITY, COMPETENCY DEVELOPMENT, AND COST EFFECTIVENESS* (undated), available at <http://67.199.72.34/php/Information/papers/APSPProposal.doc>.
- ²⁵ See, e.g., DALE PARENT, DAN WENTWORTH, PEGGY BURKE, & BECKY NEY, *Responding to Probation and Parole Violations, in ISSUES AND PRACTICES IN CRIMINAL JUSTICE* (National Institute of Justice, July 1994).
- ²⁶ Patrick A. Langan, *Between Prison and Probation: Intermediate Sanctions*, 264 SCI., May 6, 1994, at 791.
- ²⁷ WALTER J. DICKEY & MICHAEL E. SMITH, *RETHINKING PROBATION: COMMUNITY SUPERVISION, COMMUNITY SAFETY, at v* (Office of Justice Programs, December 1998).
- ²⁸ See L.W. SHERMAN, D.C. GOTTFREDSON, D.L. MACKENZIE, J. ECK, P. REUTER, & S.D. BUSHWAY, *PREVENTING CRIME: WHAT WORKS, WHAT DOESN’T, WHAT’S PROMISING* (National Institute of Justice 1998); CORRECTIONAL SERVICE OF CANADA, *COMPENDIUM 2000 ON EFFECTIVE CORRECTIONAL PROGRAMMING* (Laurence L. Motiuk & Ralph C. Serin, eds., 2000); TIM CHAPMAN & MICHAEL HOUGH, *EVIDENCE BASED PRACTICE: A GUIDE TO EFFECTIVE PRACTICE* (M. Jane Furniss ed., 2000), available at <http://nicic.gov/Library/019127>. The Guide was one of the earliest publications to refer to the what-works literature as evidence-based practices in corrections.
- ²⁹ VINCENT O’LEARY & TODD R. CLEAR, *COMMUNITY CORRECTIONS APPROACHING THE 21ST CENTURY 21–22* (National Institute of Corrections 1997).
- ³⁰ FAYE S. TAXMAN, ERIC S. SHEPARDSON, JAYME DELANO, SUZANNE MITCHELL, JAMES M. BRYNE, ADAM GELB, & MARK GORNIK, *NATIONAL INSTITUTE OF CORRECTIONS & MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, TOOLS OF THE TRADE: A GUIDE TO INCORPORATING SCIENCE INTO PRACTICE, iii* (2004).
- ³¹ See Donald A. Andrews, *Principles of Effective Correctional Programs, in CORRECTIONAL SERVICE OF CANADA, COMPENDIUM 2000 ON EFFECTIVE CORRECTIONAL PROGRAMMING* (Laurence L. Motiuk & Ralph C. Serin eds., 2000); Elyse Clawson, Brad Bogue, & Lore Joplin, *Implementing Evidence-Based Practices in Corrections*, AM. STUD. J. (2004), available at <http://www.cjinststitute.org/files/AmericanStudiesJrnlArticle091504.pdf>.
- ³² Clawson et. al., *supra* note 31.
- ³³ See http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=31336.
- ³⁴ See PEW CENTER ON THE STATES, *POLICY FRAMEWORK TO STRENGTHEN COMMUNITY CORRECTIONS* (2008), available at http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=31336. The Pew *Policy Framework* suggested specific language for a model Community Corrections Performance Incentive Act.
- ³⁵ The recently enacted Illinois Crime Reduction Act of 2009 creates a somewhat different probation improvement funding mechanism called Adult Redeploy Illinois that allows local jurisdictions to enter into funding agreements with a state oversight board based on pledges to reduce commitments of eligible nonviolent offenders to state corrections facilities by 25 percent. Illinois Senate Bill 1289, Public Act 096-0761 (2009).
- ³⁶ BLUE RIBBON COMMISSION ON INMATE POPULATION MANAGEMENT, *FINAL REPORT* (January 1990).
- ³⁷ Penal Code §§ 8050–8092.
- ³⁸ ADMINISTRATIVE OFFICE OF THE COURTS, *PROBATION SERVICES TASK FORCE, FINAL REPORT* (2003), Transmittal Letter by Ronald M. George, Chief Justice of California and Chair of the Judicial Council and Tim Smith, Supervisor, County of Sonoma, and President, California State Association of Counties, available at <https://www2.courtinfo.ca.gov/probation/report/htm>.
- ³⁹ *Id.*, Principle No. 2, at 5 (discussing that one of the principles on which “realignment” was advocated was that “courts and counties should develop and implement partnerships to administer probation departments and work collaboratively to ensure appropriate levels of services, support, funding, and oversight”).
- ⁴⁰ *Id.*, Recommendation No. 1, at 8. The Task Force also called for establishing a “graduated continuum of services and sanctions to respond to the needs of each offender” (Recommendation No. 9), development of probation standards and guidelines, and incorporation of measurable outcomes to enhance the delivery of services (Recommendations No. 3 & No. 5), and development of partnerships and collaboration between courts and counties to ensure appropriate levels of probation services, funding, and oversight (Recommendation No. 11). *Id.* at 8.
- ⁴¹ LITTLE HOOVER COMMISSION, *SOLVING CALIFORNIA’S CORRECTIONS CRISIS: TIME IS RUNNING OUT 31–32* (January 2007). The Commission recommended that the state reallocate funding equal to one half the cost of state incarceration to pay for expanded probation and other services at the local level. See also NATIONAL COUNCIL ON CRIME AND DELINQUENCY, *REPORT OF TASK FORCE ON CALIFORNIA PRISON OVERCROWDING* (August 2006).
- ⁴² Although California has heretofore failed to implement a program of community corrections or to consistently fund adult probation services, it has addressed the analogous problem of overcrowding in state juvenile institutions by transferring significant responsibilities and resources to local government for the proper care of juvenile offenders. The initial juvenile realignment legislation in 1996 created fiscal incentives to encourage the development of locally based placement and treatment alternatives for less serious juvenile offenders. See SB 681 and AB 2312 (1996).
The Juvenile Justice Crime Prevention Act of 2000 provided state funds to county probation departments to develop and implement juvenile justice programs “that have been demonstrated to be effective in reducing delinquency and addressing juvenile crime.” See Government Code section 30061 (b)(4)(B). In 2007, California enacted the Youthful Offender Block Grant

program to fund rehabilitation and supervision services for youthful offenders at the county level. See Juvenile Justice Realignment Legislation of 2007 (SB 81 and AB 191), Welfare & Institutions Code §§ 1950–1977.

The evidence-based juvenile justice realignment legislation is viewed as having been very successful in addressing juvenile crime. Whereas felony arrest rates for adults have increased steadily since 2000, felony arrest rates for juveniles have declined significantly. See CALIFORNIA LEGISLATIVE ANALYST OFFICE, CALIFORNIA'S CRIMINAL JUSTICE SYSTEM: A PRIMER (January 31, 2007). Between 1995 and 2005, the juvenile felony arrest rate in California decreased by 46 percent. *Id.* Some researchers attribute the decline to the implementation of more effective juvenile prevention and intervention programs. *Id.*

⁴³ The four specific Summit recommendations to the Judicial Council were as follows:

- I. The Council should support legislation and modify the Criminal Rules of Court to clearly and explicitly include reduction of recidivism as a primary purpose of sentencing, and a primary purpose of the provision of probation services, for those offenders placed on probation.
- II. In order to reduce recidivism by offenders placed on probation while holding probationers accountable, the Council should develop statewide strategies to implement evidence-based sentencing practices and principles of evidence-based practice in the sentencing and supervision of offenders placed on probation
- III. In order to reduce recidivism by offenders placed on probation while holding probationers accountable, the Council should develop strategies to strengthen adult probation services and implement key recommendations of the 2003 Report of the Probation Services Task Force.
- IV. In order to improve public safety, reduce recidivism by offenders supervised in the community, and more effectively hold those offenders accountable, the Council should establish a California Commission on Community Corrections to propose a new, comprehensive, and coordinated system of community supervision and corrections for California.

⁴⁴ Several other developments in California in 2007–2009 played a significant but less direct role in the ultimate reform proposal embodied in SB 678. Between March 2007 and December 2008, for example, the Stanford Criminal Justice Center sponsored a series of titled Executive Sessions on Sentencing and Corrections that brought together court and corrections leaders, academics, and other public officials to discuss issues of sentencing and probation reform. (Reports of those executive sessions are available at http://www.law.stanford.edu/program/centers/scjc/#recorded_past_events.)

In June 2009, the Administrative Office of the Courts partnered with the Chief Probation Officers of California to create the California Risk Assessment Pilot Project. With funding from the National Institute of Corrections and State Justice Institute, the project provides training and technical assistance to pilot projects in six counties seeking to reduce prison commitments among felony probationers ages 18–25 through the judicial use of actuarial risk and needs assessment information in sentencing and probation violation proceedings. The project will track the success of the pilot courts in reducing felony recidivism and revocation rates over the next three years in comparison with rates for similar offenders sentenced and supervised under preexisting sentencing and supervision procedures.

⁴⁵ Senator Leno is Chair of the Senate Committee on Public Safety. Senator Benoit was Vice Chair of the Senate Committee on Public Safety.

⁴⁶ Except as otherwise indicated, the following discussion of SB 678 is based on specific provisions in the bill, published bill

analyses prepared by legislative staff, interviews with individuals familiar with the legislative history of the bill, or the author's personal knowledge.

⁴⁷ Penal Code § 1228 (b).

⁴⁸ The local Community Corrections Partnerships are to be chaired by the chief probation officer and composed of thirteen other statutorily enumerated members, including the presiding judge of the superior court, or his or her designee. Under the Act, evidence-based practices are defined as “supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or post-release supervision.”

⁵⁰ SB 678, Bill Analysis, Senate Committee on Public Safety, April 27, 2009.

⁵¹ LAO, *supra* note 8, at 23.

⁵² The Evidence-Based Probation Supervision Grant program was enacted as section 67(2) (b) of Assembly Bill 4X 1. Section 67(2) (b) directs that the California Emergency Management Agency distribute \$45 million of California's federal Edward Byrne Memorial Justice Assistance Grant stimulus funds provided under the American Recovery and Reinvestment Act of 2009 in three-year grants to county probation departments. To receive funding, applicant probation departments must demonstrate that the programs for which they seek funding are evidence based and targeted toward adults on felony probation.

An evidence-based program is defined as one for which the applicant can identify empirical evidence that the program has been shown to reduce rates of re-offending or re-incarceration, or that is considered a best practice in the criminal justice literature. Probation departments submitting qualifying applications will receive funds in proportion to each county's population of adults ages 18–25, provided that each qualifying county receives a minimum of \$33,000. The Budget Act provision also includes funding to the California AOC to provide technical assistance to probation departments in implementing the grants, including developing and reporting on outcome-based measures to evaluate the effectiveness of the evidence-based programs.

⁵³ The county probation failure reduction incentive payments are to be deposited into the State Community Corrections Performance Incentive Fund administered by the California AOC and then transferred to the respective County Community Corrections Performance Incentives Funds.

In order to avoid penalizing county probation departments that have already achieved low probation failure rates, the Act provides that probation departments with felony probation failure rates more than 50 percent below the statewide average are eligible for high-performance grants from the state savings fund for the purpose of “bolstering evidence-based probation practices designed to reduce recidivism among adult felony probationers.” See Penal Code § 1233.4 (c). The high-performance grant program is administered by the AOC and 5 percent of statewide savings are annually set aside for this purpose.

⁵⁴ SB 678 differs slightly from the Arizona legislation, which shares only the savings resulting from reductions in revocations, not from reductions in felony recidivism, and only if there is also a reduction in felony recidivism rates. SB 678 also differs slightly from the Pew Framework, which shares savings resulting from reductions in revocations and recidivism, but only if there is no increase in recidivism rates.

⁵⁵ SB 678, § 3.

⁵⁶ *Supra* note 50 (emphasis in original).

⁵⁷ Additional support for the bill came from the May 29, 2009, report of the LAO, *Achieving Better Outcomes for Adult Probation*. Based on a recent survey of county probation departments

and a review of national research on probation effectiveness, the LAO found that “the absence of a stable funding source for adult probation, and the lack of fiscal incentives to promote the best outcomes for public safety,” combined with probation’s failure to “regularly follow the best practices identified in the research” result “in a lost opportunity to improve public safety as well as to reduce high state corrections costs.” See LAO, *supra* note 8, at 16.

The LAO recommended a fiscal incentive program for probation very similar to SB 678, which had been introduced while the LAO was preparing its analysis and report. *Id.* at 21. The LAO report also advocated that the legislature direct use of California’s Justice Assistance Grant funds “for an upfront investment” in the new fiscal incentive program—which the legislature subsequently did. *Id.* at 27. See text at note 50.

⁵⁸ See <http://www.ebudget.ca.gov/pdf/BudgetSummary/GovernorsMessage.pdf>.

⁵⁹ The version of the California Community Corrections Performance Incentives Act that was enacted as part of the California corrections reform package is contained in Senate Bill X3 18, § 36. Both versions of the Act went into effect in January 2010. One of the differences between the two bills is that SB 678 contains some late amendments by the authors that added two additional members to the Community Corrections Partnerships.

⁶⁰ *Supra* note 50.

⁶¹ *Supra* note 50.

⁶² Defendant’s Response to Three Judge Court’s October 21, 2009 Order, *Coleman v. Schwarzenegger* (N.D. Cal. November 12, 2009), available at http://www.cdcr.ca.gov/News/2009_Press_Releases/docs/11-12_Filed-Stamped_Filing.pdf. In its report, the LAO projected potential savings on the assumption of a 10 percent reduction in the number of probationers sent to prison. See LAO, *supra* note 8, at 24.